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November 22, 1993

Mr. William F. Caton
Acting Secretary of Federal
Communications Commission
1919 M Street, NW
Washington, DC 20054

Re: Pioneer Preference Rulemaking - ET Docket No. 93-266

Dear Mr. Caton:

Transmitted herewith on behalf of American Portable Telecommunications, Inc. are an original and nine copies of its Reply Comments in the above-captioned proceeding.

In the event that there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,


George Y. Wheeler

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Review of the Pioneer's
Preference Rules

ET Docket No. 93-266

To: The Commission

REPLY COMMENTS OF
AMERICAN PORTABLE TELECOMMUNICATIONS, INC.

American Portable Telecommunications, Inc. ("APT") herewith, by its attorneys, files its reply comments in the above-captioned proceeding.¹

APT originated and proposed to the Commission in its pioneer preference request (File No. PP-7) its Enhanced Personal Message Service ("EPMS") which integrates two-way voice broadband PCS capabilities with one-way alphanumeric messaging. The unique public benefits of EPMS include--substantial improvements in control by users over incoming and outgoing communications, significant efficiencies in PCS spectrum use and significant reduction in costs to users.

We requested in our comments and reply comments in response to the Commission's Tentative Decision and Memorandum Opinion and Order in General Docket No. 90-314 (released November 6, 1992) that APT's request should be given a "hard look" reevaluation,

¹ A list of parties filing Comments in these proceedings, including the abbreviated names used for reference in these Reply Comments, is Attachment A hereto.

No. of Copies rec'd
List A B C D E

that separate processing and separate criteria should be used to evaluate "service" and "technology" proposals, that the guidelines for evaluating "service" proposals should be clarified and that the number of preference awards should be expanded to reflect the unprecedented number and diversity of PCS developmental programs before the Commission for evaluation.

We address here aspects of the Commission's proposals in the above-captioned proceeding which potentially will limit the full and fair Commission reevaluation of our pending pioneer preference request (File No. PP-7). Without regard to possible actions which the Commission may take with respect to future proceedings, the Commission should not act retroactively to diminish the opportunities for awards to APT and others in the broadband PCS rulemaking proceeding.

1. Proposal to Repeal Pioneer Preference Rules.

We strongly oppose the possible repeal of the Commission's pioneer preference rules so as to render APT's pending pioneer preference request moot and ungrantable. Numerous commenters have described this as "grossly unfair" (Associated Communications Comments, p. 4), "manifestly unfair" (Cablevision Comments, p. 14), and "irrational and unfair" (In-Flight Comments, p. 7). APC, Cox and Omnipoint argue these points at length identifying themselves as "holders" of tentative awards. While we do not claim to "hold" a tentative award, we believe that the same equities which they argue apply equally to our pending request.

2. Proposal to Amend "Service" Evaluation Features of Pioneer Preference Rules.

We also support the objections of PCN America and others to possible retroactive revisions to the pioneer preference standards to exclude the proposals of innovators whose contribution has been largely in the form of innovations regarding a new service.

APT and others filed comments concerning the Commission's Tentative Decision in its broadband PCS docket describing the apparent reluctance to make any awards in that proceeding for "service" proposals, such as that made by APT. We adopt by reference our reply comments in that proceeding to document the omissions in the Commission's decision on this point.² We proposed that the requests of APT and others be reevaluated and that "service" proposal awards be made to parallel the tentative "technology" awards to APC, Cox and Omnipoint.

We have previously described in the record of General Docket No. 90-314 how our "service" proposals combine intelligent network features and integrate broadband PCS/paging operations (proposed and developed in advance of others who are now implementing such systems). We believe that we have made a substantial contribution and that our proposals are truly innovative, will benefit the public in terms of expanded communications options and highly affordable service. In short, our request as

² For the convenience of the Commission staff, additional copies of those Reply Comments are being filed herewith.

documented in over two years of developmental and experimental effort meets all of the Commission's criteria for grant.

For all of the same reasons argued by others for continued applicability of the pioneer preference rules, we believe that our "service" request, which was undertaken in reliance on the plain language of the Commission's rules, deserves to be evaluated on its considerable merits. Omnipoint's Comments (pp. 27-28) describe in detail the heavy burden which the Commission must bear to withstand court review if it retroactively revises established rules. Commissioner Barrett had it right when he described aspects of the proposals in this proceeding as the "ultimate public policy 'bait and switch'." The Commission should give "service" proposals in its broadband PCS docket equal consideration to that given all "technology" proposals.

3. Proposals for Amendment to Take Account of Competitive Bidding

APT agrees with the numerous commenters who support grant of pioneer preference awards in a manner compatible with competitive bidding selection. We believe that a reasonable and fair alternative to the Commission's "pass-fail" test for pioneer preference awards should make a final evaluation of each of the pending requests in the broadband PCS docket. Companies like APT and others who have expended substantial developmental efforts including continuing commitments to experimental programs should receive appropriate recognition for their contributions. The Commission should grade each of their innovative proposals and award bid enhancements (comparable to those proposed by the SBAC)

which range in size from a low of 5 percent to a high of 20 percent based upon the grade given each innovator. The bid enhancements would apply only to bidding on a single BTA license for a 20 MHz channel block (or less) in the market area where the experimental program took place. Speculators who merely filed and conducted perfunctory experimental programs (or none at all) should be dismissed or denied as the Commission has previously proposed.

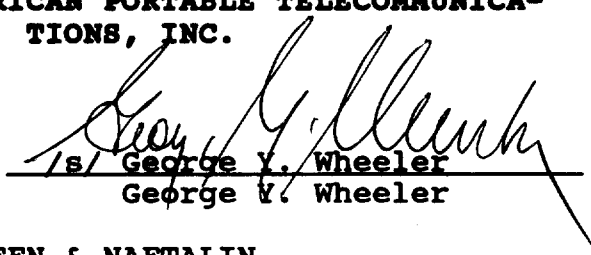
Conclusion

We and the other companies filing pioneer preference requests in the broadband PCS proceeding who have made the financial and other commitments to file, demonstrate, develop, and experiment and to keep the Commission fully informed regarding all of these matters deserve to have our requests fairly evaluated on their merits. Whatever rule changes are ultimately adopted, they should not undercut this fundamental equity.

Respectfully submitted,

AMERICAN PORTABLE TELECOMMUNICATIONS, INC.

By


/s/ George V. Wheeler
George V. Wheeler

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November 22, 1993

Attachment A

List of Parties Commenting in ET Docket No. 93-266

Adams Telcom, Inc., Advanced Tel., Inc, Columbia Wireless Limited Partnership, East Ascension Telephone Company, Inc., Middle Georgia Personal Communications, Paramount Wireless Limited Partnership, Reserve Telephone Company, Inc., Reserve Telecommunications and Computer Corp., and Tri-Star Communications, Inc.	("Appellant Parties" or "Parties")
Advanced Cordless Technologies, Inc.	("ACT")
Advanced MobileComm Technologies, Inc. and Digital Spread Spectrum Technologies, Inc.	("AMT")
American Personal Communications	("APC")
Ameritech	("Ameritech")
Arraycomm, Inc.	("ArrayComm")
Associated Communications Corporation	("Associated")
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Cablevision Systems Corporation	("Cablevision")
CELSAT, Inc.	("CELSAT")
Corporate Technology Partners	("CTP")
Cox Enterprises	("COX")
Digital Satellite Broadcasting Corporation	("DSBC")
Grand Broadcasting Corporation	("Grand Broadcasting")
GTE Service Corporation	("GTE")
In-Flight Phone Corp.	
Motorola Satellite Communications, Inc.	("Motorola Satcom")

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Telecommunications, Inc.****United States Small Business
Administration**

CERTIFICATE OF SERVICE

I, Abbie Weiner, a secretary in the law firm of Koteen & Naftalin, do hereby certify that a copy of the foregoing "Reply Comments of American Portable Telecommunications, Inc., was sent by first class U.S. mail, postage prepaid, on this 22th day of November, 1993 to the offices of the following:

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By  /s/ Abbie Weiner
Abbie Weiner

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MAR - 1 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	GEN Docket No. 90-314
)	
Amendment of the Commission's)	RM-7140, RM-7175, RM-7618
Rules to Establish New Personal)	
Communications Services)	PP-4 through PP-20, PP-26
)	PP-27, PP-41 through PP-70,
)	PP-72 through PP-78
TO: The Commission		

REPLY COMMENTS OF
AMERICAN PORTABLE TELECOMMUNICATIONS, INC.

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March 1, 1993

Its Counsel

TABLE OF CONTENTS

SUMMARY	Page i
INTRODUCTION	Page 1
DISCUSSION	Page 6
1. The Commission's Evaluation of APT's EPMS "Service" Proposal Misinterprets or Omits Consideration of Substantial and Material Supporting Documentation	Page 6
a. APT Has Demonstrated The Technical Feasibility Of Its EPMS "Service"	Page 7
b. APT Has Developed The Capabilities Of Its EPMS "Service" And Brought This Service To A More Advanced And Effective State.	Page 7
2. APT's EPMS "Service" Concept Is A Significant Communications Innovation As Confirmed In The PCS Experiments Of Others Who Have Followed And Reproduced Many Of APT's Developmental Efforts.	Page 8
3. The Recent Agreement Of Motorola And Glenayre Engineering To Market Jointly The System Components Developed For APT's EPMS "Service" Also Supports Award Of APT's Preference Request.	Page 11
4. Commenters Have Outlined Serious Procedural And Other Problems With The Commission's <u>Tentative Decision</u> Which Need To Be Addressed.	Page 13
5. Reevaluation of its PCS Pioneer Preference Requests Should Address The Unique Factors Present in the Commission's PCS Proceedings.	Page 16
CONCLUSION	Page 18

**Attachment A - Glenayre News Release dated
February 22, 1993**

**Attachment B - Letter of Dan H. Case, Senior Vice
President and General Manager, Glenayre
Electronics Voice Systems Division dated
February 26, 1993.**

**Attachment C - Letter of Marty Gilbert, Manager, US Sales
Operations, Telepoint Systems Division,
Motorola dated February 24, 1993**

SUMMARY

American Portable Telecommunications, Inc. ("APT") described in its Comments the extensive record which it has already submitted in support of grant of a pioneer preference award for its Enhanced Personal Message Service ("EPMS"). APT's submissions demonstrate that it has satisfied all of the criteria listed in Paragraph 25 of the Commission's Tentative Decision. The status of its EPMS "service" as a "significant communications innovation," the key role of APT in originating and developing this "service" and the technical feasibility of APT's proposals are also confirmed in the attached letters of Motorola and Glenayre Engineering. The fact that other companies are also beginning to implement enhanced "meet-me" PCS/paging capabilities and other features included in the EPMS "service" concept is additional evidence that APT's request should be granted.

The Commission should make a hard-look reevaluation of APT's EPMS "service" innovation and grant APT's request. This reevaluation should take account of the differences in "service" and "technology" proposals and should recognize the unique public benefits and other attributes of "service" proposals. We also strongly support expanding the number of preference awards in recognition of the unique public interest factors before the

Commission in its PCS rulemaking. APT and others who have already made important contributions to the development of PCS, justifiably should participate in the launch of this new industry to assure early deployment and the implementation of high quality, cost effective, "universal" PCS services.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	GEN Docket No. 90-314
)	
Amendment of the Commission's)	RM-7140, RM-7175, RM-7618
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TO: The Commission		

REPLY COMMENTS OF
AMERICAN PORTABLE TELECOMMUNICATIONS, INC.

American Portable Telecommunications, Inc. ("APT"), by its attorneys, submits its Reply Comments in response to the Commission's Tentative Decision and Memorandum Opinion and Order (FCC 92-467) released November 6, 1992 ("Tentative Decision") in the above-captioned proceeding.¹

INTRODUCTION

The comments in this proceeding confirm how immensely successful the Commission's pioneer preference policies have been in encouraging the development of innovative PCS "services" and "technologies." The number, scope and diversity of developmental

¹ The abbreviated names used here to refer to the filings of other commenters are cross-referenced in the attached certificate of service to the full name of each commenter involved.

efforts, involving more than one hundred and fifty experimental authorizations, are unprecedented. The commitments of financial and personnel resources of many companies like APT have resulted in rapid advances in PCS "service" and "technology" innovation. The companies responsible for these important developmental achievements justifiably believe that their efforts should be rewarded under the Commission's preference policies.

Many commenters identify problems with the Commission's Tentative decision, most of which we believe can be traced to the omission in the record of detailed criteria for the evaluation of PCS preference requests. We and many others have described how we have been greatly disadvantaged because it is unclear what threshold showings qualify a preference request for grant. We also expressed separate concerns that the evaluation of the preference requests involving "service" proposals must address fundamentally different criteria from those at issue in the evaluation of "technology" proposals. The Commission's denial of all requests involving "service" proposals is compelling evidence that these differences were not adequately addressed in formulating the Commission's evaluation criteria or that somehow the criteria for evaluating "service" proposals turned out to be more demanding than those for "technology" proposals.

Many commenters also noted the Commission's cursory and sometimes ambiguous explanations for its tentative denials of

preference requests. We agree that the Commission's explanations have made it very difficult to provide reasoned, concise and focused discussions of the Commission's findings. This may also account for the fact that many commenters chose to present elaborate comparisons between their proposals and those of American Personal Communications, Cox and Omnipoint to demonstrate how their proposals meet or exceed the qualifications/showings of these tentative selectees.

In the case of APT, no such elaborate comparisons are possible because the Commission did not grant any preferences based upon "service" proposals. We have been forced to provide instead a comprehensive listing of points in the substantial record of our developmental program which points we believe have not been adequately recognized in the Commission's findings. As described here, the status of APT's innovation as a "significant communications innovation" is also confirmed by the fact that companies like American Personal Communications, Ameritech and Freeman Engineering have either borrowed from APT's original ideas or subsequently duplicated aspects of APT's developmental work.

The recent announcement that Glenayre Engineering and Motorola, two important equipment suppliers for APT's Enhanced Personal Message Service ("EPMS") system, have concluded a joint sales agreement to market system designs based upon the develop-

mental work pioneered by APT is also strong evidence that grant of APT's request is fully justified.² Attached is a letter of Glenayre Engineering dated February 26, 1993 confirming APT's key role in developing the PCS capabilities made possible by combining PCS, paging and intelligent network features, the importance of APT's innovation in terms of public benefit and the technical feasibility of the EPMS system operations. (Attachment B hereto). As a manufacturer with many years of experience in the wireless telecommunication field, we believe that these expert conclusions should be given great weight.

The Commission should also consider the attached letter of Mr. Marty Gilbert, Manager, U.S. Sales Operations, Telepoint Systems Division, Motorola dated February 24, 1993 concerning the public demand for APT's "enhanced 'meet-me' paging PCS concept" (Attachment C hereto). As stated in his letter, "Motorola is a strong advocate of the CT2 with paging concept as we know it today...that being, ubiquity of coverage. We feel that the combination of low cost wireless phone service, small integrated handsets and total coverage via the paging network is an extremely attractive offering to the public...[O]ur high interest in this service has recently prompted us to establish an agreement with Glenayre... for their Modular Voice Processing System (MVP)." As confirmed in the attached letter of Glenayre, APT

² A copy of the Glenayre News Release dated February 22, 1993 describing the joint sales arrangements is Attachment A hereto.

originated and developed the enhanced MVP capabilities which Motorola and Glenayre Engineering now will be jointly selling.

We believe that the extensive evidence presented here and elsewhere in the record is ample justification for a "hard look" reevaluation of APT's EPMS "service" innovation and grant based upon criteria formulated to address the unique public benefits and other attributes of "service" proposals. The number and diversity of the preference requests to receive awards should be expanded to reflect the role of APT's innovation toward the achievement of the Commission's fundamental goals in its PCS rulemaking. In the alternative, if the Commission is not prepared to make an award to APT based upon the current record, we request the following steps be taken: the Commission should publish separate criteria for evaluation of "service" proposals and afford each company with a pending pioneer preference request for a "service" an opportunity to amend or supplement its proposal to be responsive to these criteria; and all pending preference requests, including any authorized amendments or supplements, should be reevaluated on a case-by-case basis under the Commission's published criteria.

DISCUSSION

- (1) The Commission's Evaluation of APT's EPMS "Service" Proposal Misinterprets or Omits Consideration of Substantial and Material Supporting Documentation.

APT and many other commenters have objected to the brief and indefinite explanations given by the Commission for denying their pioneer preference requests. The Commission's discussion of these matters in Paragraph 25 of the Tentative Decision erroneously suggests that either required information was omitted or that somehow the Commission has determined that our showings were inadequate. While we cannot know the precise basis for the Commission's tentative findings, we contend that these findings are wrong and that we have submitted substantial supporting documentation on each of the evaluation criteria referenced in that Paragraph 25.

As described in our January 29 Comments and elsewhere in the Commission's records, APT concentrated its efforts upon development of "service" offerings which will greatly expand the PCS features and capabilities available to the public, will be highly affordable, will be capable of rapid and widespread deployment and will be spectrum efficient. From a user perspective the public benefits from this innovative service include rapid, widespread access to PCS service, feature-rich communications capabilities and affordable prices. Our market studies conducted by Arthur D. Little confirm the substantial public demand for

these innovative and affordable capabilities. Contrary to the Commission's apparent findings in Paragraph 25 of its Tentative Decision, the technical feasibility of the enhanced "meet-me" call capabilities and the other valuable features of the EPMS "service" and the key role of APT in developing the EPMS "service" have also been amply demonstrated.

(a) APT Has Demonstrated The Technical Feasibility Of Its EPMS "Service"

As reported to the Commission, APT has had a fully operational EPMS system in Orlando since early July 1992 and continues to make improvements to the EPMS "service" concept on the basis of its ongoing market testing program. APT has documented the technical feasibility of its EPMS "service" proposal in written showings and in reports of experimental test results as follows: Interim Progress dated June 25, 1992; Second Progress Report dated July 15, 1992; Third Progress Report dated October 15, 1992 and Fourth Progress Report dated January 15, 1993.

(b) APT Has Developed The Capabilities Of Its EPMS "Service" And Brought This Service To A More Advanced And Effective State.

APT has described in detail its "vision" for a PCS service which is a unique and significant innovation and substantial enhancement to existing wireless and other service offerings.